

1. Recitals

- A. This Agreement has been determined to constitute a business associate relationship under the Health Insurance Portability and Accountability Act (“HIPAA”) and its implementing privacy and security regulations at 45 CFR Parts 160 and 164 (“the HIPAA regulations.”).
- B. The California Department of Aging (CDA) the California Department of Health Services (DHS) wish to disclose to Business Associate certain information pursuant to the terms of this Agreement, some of which may constitute Protected Health Information (“PHI”).
- C. “Protected Health Information” or “PHI” means any information, whether oral or recorded in any form or medium that relates to the past, present, or future physical or mental condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual; and that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual. PHI shall have the meaning given to such term under HIPAA and HIPAA regulations, as the same may be amended from time to time.
- D. Under this Agreement, Contractor is the Business Associate of DHS/CDA and provides services, arranges, performs or assists in the performance of functions or activities on behalf of DHS/CDA and uses or discloses PHI.
- E. DHS/CDA and Business Associate desire to protect the privacy and provide for the security of PHI disclosed pursuant to this Agreement, in compliance with HIPAA and HIPAA regulations and other applicable laws.
- F. The purpose of the Exhibit is to satisfy certain standards and requirements of HIPAA and the HIPAA regulations.
- G. The terms used in this Exhibit, but not otherwise defined, shall have the same meanings as those terms in the HIPAA regulations.

In exchanging information pursuant to this Agreement, the parties agree as follows:

2. Permitted Uses and Disclosures of PHI by Business Associate.

- A. *Permitted Uses and Disclosures.* Except as otherwise indicated in this Exhibit, Business Associate may use or disclose PHI only to perform functions, activities or services specified in this Agreement, for, or on behalf of DHS/CDA, provided that such use or disclosure would not violate the HIPAA regulations, if done by DHS/CDA.
- B. *Specific Use and Disclosure Provisions.* Except as otherwise indicated in this Exhibit, Business Associate may:
 - (1) *Use and disclose for management and administration.* Use and disclose PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided that disclosures are required by law, or the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and will be used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware that the confidentiality of the information has been breached.

- (2) *Provision of Data Aggregation Services.* Use PHI to provide data aggregation services to DHS/CDA. Data aggregation means the combining of PHI created or received by the Business Associate on behalf of DHS/CDA with PHI received by the Business Associate in its capacity as the Business Associate of another covered entity, to permit data analyses that relate to the health care operations of DHS/CDA.

3. Responsibilities of Business Associate.

Business Associate agrees:

- A. *Nondisclosure.* To not use or disclose Protected Health Information (PHI) other than as permitted or required by this Agreement or as required by law.
- B. *Safeguards.* To implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the protected health information, including electronic PHI, that it creates, receives, maintains or transmits on behalf of DHS/CDA; and to prevent use or disclosure of PHI other than as provided for by this Agreement. Business Associate shall maintain a comprehensive written information privacy and security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of the Business Associate's operations and the nature and scope of its activities. Business Associate will provide DHS/CDA with information concerning such safeguards as DHS/CDA may reasonably request from time to time.
- C. *Mitigation of Harmful Effects.* To mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate or its subcontractors in violation of the requirements of this Exhibit.
- D. *Reporting of Improper Disclosures.* To report to DHS/CDA within twenty-four (24) hours during a work week, of discovery by Business Associate that PHI has been used or disclosed other than as provided for by this Agreement and this Exhibit.
- E. *Business Associate's Agents.* To ensure that any agents, including subcontractors, to whom Business Associate provides PHI received from or created or received by Business Associate on behalf of DHS/CDA, agree to the same restrictions and conditions that apply to Business Associate with respect to such PHI; and to incorporate, when applicable, the relevant provisions of this Exhibit into each subcontract or subaward to such agents or subcontractors.
- F. *Availability of Information to DHS/CDA and Individuals.* To provide access as DHS/CDA may require, and in the time and manner designated by DHS/CDA (upon reasonable notice and during Business Associate's normal business hours) to PHI in a Designated Record Set, to DHS/CDA (or, as directed by DHS/CDA), to an Individual, in accordance with 45 CFR Section 164.524. Designated Record Set means the group of records maintained for DHS/CDA that includes medical and billing records about individuals; enrollment, payment, claims adjudication, and case or medical management systems maintained for DHS/CDA health plans; or those records used to make decisions about individuals on behalf of DHS/CDA.
- G. *Amendment of PHI.* To make any amendment(s) to PHI that DHS/CDA directs or agrees to pursuant to 45 CFR Section 164.526, in the time and manner designated by DHS/CDA.

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- H. *Internal Practices.* To make Business Associate's internal practices, books and records relating to the use and disclosure of PHI received from DHS/CDA, or created or received by Business Associate on behalf of DHS/CDA, available to DHS/CDA or to the Secretary of the U.S. Department of Health and Human Services in a time and manner designated by DHS/CDA or by the Secretary, for purposes of determining DHS/CDA's compliance with the HIPAA regulations.
- I. *Documentation of Disclosures.* To document and make available to DHS/CDA or (at the direction of DHS/CDA) to an Individual such disclosures of PHI, and information related to such disclosures, necessary to respond to a proper request by the subject Individual for an accounting of disclosures of PHI, in accordance with 45 CFR 164.528.
- J. *Notification of Breach.* During the term of this Agreement, to notify DHS within twenty-four (24) hours during a work week of any suspected or actual breach of security, intrusion or unauthorized use or disclosure of PHI and/or any actual or suspected use or disclosure of data in violation of any applicable federal and State laws or regulations. Business Associate shall take (i) prompt corrective action to cure any such deficiencies and (ii) any action pertaining to such unauthorized disclosure required by applicable federal and State laws and regulations. Business Associate shall investigate such breach, or unauthorized use or disclosure of PHI, and provide a written report of the investigation to the DHS Privacy Officer within fifteen (15) working days of the discovery of the breach or unauthorized use at:

Privacy Officer
C/o Office of Legal Services
California Department of Health Services
P.O. Box 942732
Sacramento, CA 94234-7320

- K. *Employee Training and Discipline.* To train and use reasonable measures to ensure compliance with the requirements of this Exhibit by employees who assist in the performance of functions or activities on behalf of DHS/CDA under this Agreement and use or disclose PHI; and discipline such employees who intentionally violate any provisions of this Exhibit, including termination of employment.

4. Obligations of DHS/CDA.

DHS/CDA agrees to:

- A. *Notice of Privacy Practices.* Provide Business Associate with the Notice of Privacy Practices that DHS produces in accordance with 45 CFR 164.520, as well as any changes to such notice. Visit this Internet address to view the most current Notice of Privacy Practices:
<http://www.dhs.ca.gov/hipaa>.
- B. *Permission by Individuals for Use and Disclosure of PHI.* Provide the Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes affect the Business Associate's permitted or required uses and disclosures.
- C. *Notification of Restrictions.* Notify the Business Associate of any restriction to the use or disclosure of PHI that DHS/CDA has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect the Business Associate's use or disclosure of PHI.

- D. *Requests Conflicting with HIPAA Rules.* Not request the Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA regulations if done by DHS/CDA.

5. Audits, Inspection and Enforcement.

From time to time, DHS/CDA may inspect the facilities, systems, books and records of Business Associate to monitor compliance with this Agreement and this Exhibit. Business Associate shall promptly remedy any violation of any provision of this Exhibit and shall certify the same to the DHS/CDA Privacy Officer in writing. The fact that DHS/CDA inspects, or fails to inspect, or has the right to inspect, Business Associate's facilities, systems and procedures does not relieve Business Associate of its responsibility to comply with this Exhibit, nor does DHS/CDA's:

- (a) Failure to detect or
- (b) Detection, but failure to notify Business Associate or require Business Associate's remediation of any unsatisfactory practices

constitute acceptance of such practice or a waiver of DHS/CDA's enforcement rights under this Agreement and this Exhibit.

6. Termination.

- A. *Termination for Cause.* Upon DHS/CDA's knowledge of a material breach of this Exhibit by Business Associate, DHS/CDA shall either:

- (1) Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by DHS/CDA;
- (2) Immediately terminate this Agreement if Business Associate has breached a material term of this Exhibit and cure is not possible; or
- (3) If neither cure nor termination are feasible, the DHS/CDA Privacy Officer shall report the violation to the Secretary of the U.S. Department of Health and Human Services.

- B. *Judicial or Administrative Proceedings.* DHS/CDA may terminate this Agreement, effective immediately, if (i) Business Associate is named as a defendant in a criminal proceeding for a violation of HIPAA or (ii) a finding or stipulation that the Business Associate has violated any standard or requirement of HIPAA, or other security or privacy laws is made in any administrative or civil proceeding in which the Business Associate has been joined.

- C. *Effect of Termination.* Upon termination or expiration of this Agreement for any reason, Business Associate shall return or destroy all PHI received from DHS/CDA (or created or received by Business Associate on behalf of DHS/CDA) that Business Associate still maintains in any form, and shall retain no copies of such PHI or, if return or destruction is not feasible, it shall continue to extend the protections of this Exhibit to such information, and limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate.

7. Miscellaneous Provisions.

- A. *Disclaimer.* DHS/CDA makes no warranty or representation that compliance by Business Associate with this Exhibit, HIPAA or the HIPAA regulations will be adequate or satisfactory for Business Associate's own purposes or that any information in Business Associate's possession or control, or transmitted or received by Business Associate, is or will be secure from unauthorized use or disclosure. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.
- B. *Amendment.* The parties acknowledge that federal and State laws relating to electronic data security and privacy are rapidly evolving and that amendment of this Exhibit may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HIPAA regulations and other applicable laws relating to the security or privacy of PHI. Upon DHS/CDA's request, Business Associate agrees to promptly enter into negotiations with DHS/CDA concerning an amendment to this Exhibit embodying written assurances consistent with the standards and requirements of HIPAA, the HIPAA regulations or other applicable laws. DHS/CDA may terminate this Agreement upon thirty (30) days written notice in the event (i) Business Associate does not promptly enter into negotiations to amend this Exhibit when requested by DHS/CDA pursuant to this Section or (ii) Business Associate does not enter into an amendment providing assurances regarding the safeguarding of PHI that DHS/CDA in its sole discretion, deems sufficient to satisfy the standards and requirements of HIPAA and the HIPAA regulations.
- C. *Assistance in Litigation or Administrative Proceedings.* Business Associate shall make itself, and any subcontractors, employees or agents assisting Business Associate in the performance of its obligations under this Agreement, available to DHS/CDA at no cost to DHS/CDA to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against DHS/CDA, its directors, officers or employees based upon claimed violation of HIPAA, the HIPAA regulations or other laws relating to security and privacy, except where Business Associate or its subcontractor, employee or agent is a named adverse party.
- D. *No Third-Party Beneficiaries.* Nothing express or implied in the terms and conditions of this Exhibit is intended to confer, nor shall anything herein confer, upon any person other than DHS/CDA or Business Associate and their respective successors or assignees, any rights, remedies, obligations or liabilities whatsoever.
- E. *Interpretation.* The terms and conditions in this Exhibit shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HIPAA regulations and applicable State laws. The parties agree that any ambiguity in the terms and conditions of this Exhibit shall be resolved in favor of a meaning that complies and is consistent with HIPAA and the HIPAA regulations.
- F. *Regulatory References.* A reference in the terms and conditions of this Exhibit to a section in the HIPAA regulations means the section as in effect or as amended.
- G. *Survival.* The respective rights and obligations of Business Associate under Section 6.C of this Exhibit shall survive the termination or expiration of this Agreement.

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- H. *No Waiver of Obligations.* No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.